IX. SUMMARY OF THE ARGUMENT

Certiorari is granted only for compelling reasons. The differences of approach to a court's use of its inherent power to sanction is one of procedure which does not rise to the level of importance which requires resolution by this Court. The Third and Fifth Circuits require a district court to first find that sanctioning provisions in the statutes and rules are not fully adequate before using inherent power. The Sixth and Ninth Circuits require an express finding of bad faith and a use of informed discretion, including consideration of provisions in rules and statutes, before a district court uses its inherent power to sanction. Both approaches are based upon a reasonable interpretation of this Court's holding in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), and serve to adequately regulate the use of inherent power. This Court does not resolve conflicts among the Courts of Appeals which are simply administrative or managerial. *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959).

Petitioner's second question for review, claiming a conflict between the D.C. Circuit and the Ninth Circuit on whether a free-standing contempt citation is civil or criminal, is simply a non-issue. A careful reading of the cases in question reveals that no conflict exists. Both circuits agree that the "character and purpose" of the contempt citation determines whether it is criminal or not, and utilize the same analysis. The factual differences in the cases lead to the differing findings. It is only through an incomplete reading of the cases which considers only one of the two factors that Petitioner is able to claim a conflict exists.

X. ARGUMENT

A. Introduction.

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons." S. Ct. Rule 10. It is a rare issue which merits consideration by this Court.

> A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants.

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 74 (1955).

The careful and consistent use of stringent standards of discretion in granting certiorari is critical to this Court as an institution.

> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is *real and embarrassing* conflict of opinion and authority between the Circuit Courts of Appeals.

Rice, 349 U.S. at 79 (citation omitted) (emphasis added).

Thus, this Court conscientiously limits review of conflicts in the Courts of Appeal. "[This Court's] function in resolving conflicts among the Courts of Appeals is

judicial, not simply administrative or managerial." *The Monrosa*, 359 U.S. at 184.

B. The Disagreement Between The Circuits Does Not Rise to The Level of Importance Required for This Court's Review.

This Court has noted the challenges of contempt power. This power of the courts has long been recognized as necessary "to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates. . . ." *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994) (quoting *Anderson v. Dunn*, 6 Wheat. 204, 227 (1821)). Indeed, without contempt authority, exercise of any of the roles of the courts would be impossible. However, while necessary, contempt authority can be problematic, as the judge alone is "responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Bagwell*, 512 U.S. at 831. Thus, the potential for abuse is great.

This Court has attempted to balance the necessities and risks of inherent contempt authority. Jurisprudence allows:

> . . . a relatively unencumbered contempt power when its exercise is most essential, and requir[es] progressively greater procedural protections when other considerations come into play. The necessity justification for the contempt authority is at its pinnacle, of course, where contumacious conduct threatens a court's immediate ability to conduct its proceedings, such as where a witness refuses to testify, or a party disrupts the court.

Bagwell, 512 U.S. at 832.

The bases for invoking the inherent power to sanction include: "willful disobedience of a court order . . . or when the losing party has acted in bad faith . . . " and "against counsel who willfully abuse judicial processes." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980) (internal quotation marks and citations omitted).

Exactly when a court may invoke its inherent power to sanction is explored in *Chambers*. The portion of this opinion which lays out the general rule states:

> But neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules. A court must, of course, exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees. Furthermore, when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.

Chambers, 501 U.S. at 50.

In *Chambers*, this Court affirmed a district court's assessment of nearly one million dollars in sanctions for a party's bad-faith conduct during litigation. The sanctions were to compensate the opposing party for attorney's fees and costs, and were imposed under the court's inherent power. *Id.* at 30.

Pursuant to *Chambers*, in the Ninth and Sixth Circuits, a court may rely on its informed discretion in utilizing its inherent power to sanction, if it has first made an express finding of bad faith. *See Fink v. Gomez*, 239 F.3d 989 (9th Cir. 2001); *First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501 (6th Cir. 2002). This reading of *Chambers* focuses first on finding bad faith, and then allows the court to exercise its informed discretion. Such a reading is consistent with the important language of *Chambers*.

While the court is not required to first find that sanctioning provisions in statutes and the Rules are inadequate before using its inherent power to sanction, the bad faith requirement is an effective restraint on the use of inherent powers. *See United States v. Stoneberger*, 805 F.2d 1391, 1393 (9th Cir. 1986) (imposition of sanctions on tardy attorney reversed for lack of bad faith conduct); *Zambrano v. City of Tustin*, 885 F.2d 1473, 1485 (9th Cir. 1989) (sanctions vacated because sanctioned conduct was negligent failure to comply with local rules); *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir. 1993) (sanctions vacated because there was no evidence of bad faith on part of attorney).

The Third and Fifth Circuits require that the sanctioning provisions in the statutes and Rules be inapplicable or inadequate before a court turns to its inherent power. *See Carroll v. Jaques Admiralty Law Firm, P.C.*, 110 F.3d 290, 293 (5th Cir. 1997) (sanction upheld were statutes and rules did not "squarely contemplate sanctions payable to the court for disruptive behavior"); *Klein v. Stahl GMBH & Co. Maschinefabrik*, 185 F.3d 98, 110 (3rd Cir. 1999) (district court's application of judicial estoppel, pursuant to inherent power, vacated and remanded for

determination whether less extreme sanctions under the rules or statutes were sufficient). This approach emphasizes different *Chambers* language than the Sixth and Ninth Circuits approach, focusing on whether existing rules and statutes have adequate sanctioning provisions. However, this approach overlooks the bad faith language, and does not require a finding of bad faith conduct precedent to any invocation of inherent powers.

Both of these readings of *Chambers* are credible. In addition, both have effective, if differing, checks on the use of inherent power. The Sixth and Ninth Circuits require a finding of bad faith, and the Third and Fifth Circuits require a determination that existing sanctioning provisions in the statutes and rules are not up to the task. Because both approaches are faithful to the original opinion, and have measures to prevent abuse, the matter of difference is more procedural than substantive. This Court has stated that a writ of certiorari should not be granted except "in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." *Rice*, 349 U.S. at 79. The difference in the case at bar does not rise to this level. The Petition for a Writ of Certiorari should be denied on this issue above.

C. There Is No Genuine Conflict Between the D.C. and Ninth Circuits on Whether a Free-Standing Contempt Citation Is Criminal in Nature.

Petitioner notes that the D.C. Circuit has held in *Cobell v. Norton*, 334 F.3d 1128 (D.C. Cir. 2003), that a free-standing contempt citation, is criminal in nature. Although there are similarities between the contempt

citation in *Cobell* and the instant case, these cases can be distinguished in two critical respects. First, unlike *Lasar*, the contempt in *Cobell* was not combined with compensation for the opposing party. Second, the conduct sanctioned in *Cobell* did not occur in the presence of the court.

"A contempt proceeding is either civil or criminal by virtue of its 'character and purpose'. . . ." *Cobell*, 334 F.3d at 1145 (*citing Int'l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827 (1994); *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441 (1911)). Civil contempt most commonly is utilized to compel compliance with a court order, but may also be designed to compensate the party aggrieved by the contumacious conduct. *Cobell*, 334 F.3d at 1145. "By contrast, criminal contempt is used to punish, that is, to 'vindicate the authority of the court' following a transgression rather than to compel future compliance or to aid the plaintiff." *Id.* (quoting *Bagwell*, 512 U.S. at 828.)

In *Cobell*, the district court held the defendants in contempt for litigation misconduct, failure to comply with a court order, and committing "fraud on the Court" in four different ways. *Cobell*, 334 F.3d at 1145. The behavior leading to the contempt consisted primarily of allegedly failing to undertake an "Historic Accounting Project" as ordered by the court. *Id.* at 1147. The court noted that "the nature of the contempt is obscured by the lack of any clear sanction." *Id.* at 1145. In addition, no relief seemed to have been granted to the plaintiff.

> In fact, other than an award of expenses the plaintiffs incurred in the contempt trial – which cannot be considered relief for the underlying contempt – the only relief granted which could conceivably be based upon the findings of contempt

> are the initiation of the Phase 1.5 proceeding and the appointment of the Special Master.

Cobell, 334 F.3d at 1145-46 (citations omitted). The *Cobell* contempt was based on conduct which did not occur in the presence of the court, and did not provide relief or compensation to the plaintiffs.

The contempt in the instant case was based upon conduct which occurred in the presence of the court, and was coupled with sanctions clearly designed to compensate the plaintiff. Sutter violated a court order before the court, in the midst of trial. In addition, the monetary sanctions which were coupled with the contempt citation were designed to compensate Lasar for the actual losses sustained as a direct result of the contempt. On these important grounds, the instant case is far different from *Cobell*. Petitioner's contention that "[t]he Ninth Circuit's holding directly conflicts . . . " with *Cobell* is erroneous. Petitioner's claim that the contempt citation "was free-standing, in that it was not linked to any particular sanction or punishment . . ." is remarkable, given that the citation was accompanied by compensatory monetary sanctions tied directly to the expenses Lasar incurred in the two weeks before trial.

It is true that aspects of the *Lasar* contempt have characteristics of a criminal contempt. It was based upon completed conduct, and Sutter cannot fairly be said to have had an opportunity to escape the contempt and sanctions by compliance. Ultimately, the Ninth Circuit decided that though the monetary sanctions had "some attributes of criminal sanctions" these sanctions were civil because they were "designed to compensate Lasar for unnecessary costs and attorney's fees and to reimburse the

district court for the jury costs incurred as a result of the mistrial." *Lasar*, 399 F.3d at 1111. Because the sanctions were compensatory and civil, Sutter's contempt citation was not accompanied by criminal fines or a sentence of imprisonment.

There is very little support for the prospect that a contempt citation unaccompanied by criminal fines or a sentence of imprisonment can be criminal in nature. Petitioner has cited only *Cobell* in support of its position. However, as *Cobell* recognizes, a contempt citation is criminal or civil based upon "its character *and* purpose." The court in *Cobell* went on to note that the contempt citation in that case was unaccompanied by any compensatory sanctions. Having determined that the *purpose* of the contempt was not compensatory, the court went on to explore the *character* of the citation. It is this analysis that Petitioner cites for the proposition that because the contempt citation was punitive rather than remedial, it was criminal in nature. However, the D.C. Circuit reaches this conclusion only after determining that the contempt was free-standing.

In *Lasar*, by contrast, the contempt citation is coupled with compensatory monetary sanctions. Thus, while the Ninth Circuit acknowledged that aspects of the contempt were criminal in *character*, the overriding *purpose* of the contempt was compensatory. Here,

> . . . the court imposed monetary sanctions against Ford and Sutter because Sutter 'intentionally and in bad faith' violated the in limine orders and monetary sanctions were 'necessary to reimburse Lasar and the Court [and] . . . to vindicate the Court's authority and to ensure

> that Ford, through its lawyers, will not disregard or attempt to circumvent court orders in this or any other case.'

Lasar, 399 F.3d at 1107 (*quoting Lasar v. Ford Motor Co.*, 239 F. Supp. 2d at 1027, 1031).

Cobell and *Lasar* are not in "direct conflict" as Petitioner claims. It is only through an oversimplification of the reasoning of both courts that Petitioner can draw this conclusion. A more complete reading shows that both courts considered both the character and the purpose of the contempt citation, and the very different factual background of both cases lead to opposite results. *Cobell* and *Lasar* can and should be read as completely consistent with each other.

XI. CONCLUSION

This Court should deny certiorari in this case. Both of Petitioner's arguments are unavailing. The Circuit split petitioner cites is a minor difference over the procedures necessary before a court's inherent power to sanction may be used. This discrepancy is one of form rather than substance, and is not the sort of "compelling reason" this Court grants certiorari for. Petitioner's second argument that the D.C. Circuit holding in *Cobell* and the Ninth Circuit holding in *Lasar* are in direct conflict is simply erroneous. A full reading of these cases shows that both courts based their reasoning on the same criteria and reached opposite results because the cases were factually very different. *Cobell* and *Lasar* are

amenable to a completely consistent reading, and thus certiorari is not warranted on this issue either.

Respectfully submitted,

MICHAEL D. WEISMAN
WEISMAN & MCINTYRE, P.C.
99 Summer St., Ste. 2010
Boston, MA 02110
(617) 720-2727

PAUL C. MEISMER
Counsel of Record
MEISMER & ASSOCIATES, PLLC
335 W. Spruce, Ste. 201
P.O. Box 8989
Missoula, MT 59807-8989
(406) 829-1766

Counsel for Respondent

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(3)

No. 05-95

IN THE

Supreme Court of the United States

LAWRENCE SUTTER,

Petitioner,

v.

STEVEN MARK LASAR,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF FOR PETITIONER

THEODORE J. BOUTROUS, JR.
Counsel of Record
THOMAS H. DUPREE, JR.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue NW
Washington, DC 20036-5306
(202) 955-8500

Counsel for Petitioner

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REPLY BRIEF FOR PETITIONER

Respondent does not dispute petitioner's central argument: that the circuits have split over whether a district court may rely on its inherent power to sanction where the conduct may be fully addressed under the sanctioning provisions in statutes or rules. Indeed, respondent explicitly concedes the existence of a circuit split on this question, *see* Opp. 7, 9-12, 16, but contends that the issue "does not rise to the level of importance which requires resolution by this Court." Opp. 7.

Respondent is mistaken. As discussed below, this is a significant question of law that has great importance to courts and practitioners alike, and fully merits plenary review by this Court. Under the current state of the law, when an attorney appearing in district courts within the Third or Fifth Circuits is threatened with sanctions, and there exists a statute or local rule that can fully address the conduct in question, the statute or local rule—including the accompanying procedural protections—must be applied. But when the same situation occurs in district courts within the Sixth or Ninth Circuits, those courts have the option to disregard the sanctioning provisions in statutes and local rules—and the procedural protections contained therein—simply by proclaiming their use of the inherent power "appropriate" in the particular case, as the district court did here. Pet. App. 21a. As petitioner has shown, Pet. 10-12, these conflicting approaches result from the circuit courts' differing interpretations of *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991), and only this Court can now dispel the confusion and uncertainty.

Review is further warranted to resolve the conflict between the decision below and the D.C. Circuit's ruling in *Cobell v. Norton*, 334 F.3d 1128 (D.C. Cir. 2003), which held that stand-alone contempt citations like the one imposed in this case are criminal rather than civil in nature. Respondent admits that "[i]t is true that aspects of the *Lasar* contempt have characteristics of a criminal contempt," Opp. 14, but contends that *Cobell* is factually distinguishable because

the sanction in this case supposedly was compensatory, whereas the sanction in *Cobell* was punitive. This purported "distinction" is meritless. Just as in *Cobell*, the district court's contempt citation was not linked to any compensatory sanction, but rather was an independent, stand-alone sanction that was intended to punish, stigmatize and reprimand Mr. Sutter. The D.C. Circuit has squarely held that these types of contempt sanctions are criminal rather than civil in nature, and certiorari is warranted to resolve this conflict as well.

I. REVIEW IS WARRANTED TO RESOLVE THE CIRCUIT SPLIT OVER THE INHERENT SANCTIONING POWER.

Petitioner and respondent agree that the circuits are split over the proper interpretation of *Chambers*. The Ninth and Sixth Circuits permit reliance on the inherent power even when statute- and rule-based sanctions are available and fully adequate. The Third and Fifth Circuits, in contrast, permit reliance on the inherent power only when statutes or rules are incapable of reaching the conduct at issue. *See generally First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 534 (6th Cir. 2002) (Gilman, J., dissenting) (canvassing caselaw and recognizing circuit split).

Respondent contends that this circuit split is unworthy of this Court's attention, characterizing the question as "simply administrative or managerial" and asserting that "the matter of difference is more procedural than substantive." Opp. 7, 12. These arguments make little sense. Not only have the circuits visibly split over the proper interpretation of a major decision of this Court, but the practical ramifications are highly significant. Simply put, the question presented is whether the sanctioning provisions and procedures in statutes and local rules are mandatory or optional in cases where they are capable of reaching the conduct at issue. Even if, as respondent contends, both sides of the split have articulated "credible" readings of *Chambers*, Opp. 12, that just under-

scores the need for this Court to grant review and determine which side is correct.

This case dramatically demonstrates the difference between the conflicting approaches. The district court sanctioned Mr. Sutter for allegedly omitting material information from his *pro hac vice* application in violation of District of Montana Local Rule 83.14(b)(5). But the district court did not afford Mr. Sutter the many protections contained in Local Rule 83.14(f)-(*l*), the provisions establishing the *procedure* for sanctioning violations of Local Rule 83.14(b)(5). Instead, the court, citing *Chambers*, relied on its inherent power. The Ninth Circuit affirmed, holding that the district court was free to bypass the sanctioning procedures in its Local Rules whenever it deemed them not "appropriate" in a particular case. Pet. App. 21a.

Under the approach followed in the Third and Fifth Circuits, the district court could not have sanctioned Mr. Sutter under its inherent power. Rather, because there exists a Local Rule specifically governing omissions in *pro hac vice* applications, it would have had to follow the procedures set forth in Local Rule 83.14(f)-(*l*), and appointed an independent investigator and, if the results of the investigation so warranted, an independent counsel. *Cf. In re Thalheim*, 853 F.2d 383, 388-89 (5th Cir. 1988) (reversing sanction where district court bypassed local rules requiring the appointment of an independent investigator and independent prosecutor).

The approach followed by the Ninth and Sixth Circuits makes it impossible to know in advance the law that will govern allegations of sanctionable conduct, and creates a substantial risk of unfair and arbitrary rulings. In one case, a court may decide to afford an attorney the extensive procedural protections contained in the local rules. In another case, the same court may, without explanation, deny those protections to an attorney on grounds that the local rules are simply not "appropriate." As respondent admits, a district court's sanctioning authority can be "problematic" and "the potential for abuse is great" where, as here, "the judge alone

is 'responsible for identifying, prosecuting, adjudicating, and sanctioning'" the conduct at issue. Opp. 9 (quoting *Int'l Union, UMW v. Bagwell*, 512 U.S. 821, 831 (1994)).[1]

Respondent insists that the ruling below was consistent with the Local Rules because "[t]he district court's local rules expressly provide for judicial use of 'inherent power' in imposing sanctions." Opp. i. But the Local Rules for the District of Montana do not actually mention the "inherent power." To the extent respondent is relying on two provisions in Local Rule 83.14, neither provision is relevant here. Local Rule 83.14(a) provides that "[n]othing contained in this Rule shall be construed to limit or deny the Court such powers as are necessary to maintain control over proceedings before it, such as contempt power." But Mr. Sutter's alleged conduct was not disruptive and obviously did not threaten the court's ability to "maintain control"—nor was reliance on the inherent power "necessary" given the sanctioning provisions in the Local Rules, which plainly were "up to the task" of addressing the purported omission in Mr. Sutter's application. *Chambers*, 501 U.S. at 50.

Although Local Rule 83.14(b) provides that "[n]othing in this section precludes the Court or any judge of the Court from assessing sanctions for violations of local practice and procedure rules or other applicable statutes and rules," petitioner is not contending that the district court was *precluded* from assessing sanctions for a violation of the Local Rules. Rather, petitioner is arguing that the district court should

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[1] Respondent takes issue with a "see also" citation in the petition, contending that it is "misleading" to characterize *Cyphers v. Fuji Heavy Industry Co.*, 32 F. Supp. 2d 1199 (D. Mont. 1998), as a "published opinion denying admission *pro hac vice* to out-of-state product liability law firm Bowman and Brooke." Opp. 6. But that is exactly what this case holds, and it illustrates the dangers out-of-state attorneys can confront when seeking admission to an unfamiliar federal court. *Cf. Barrow S.S. Co. v. Kane*, 170 U.S. 100, 111 (1898) (purpose of diversity jurisdiction "was to secure a tribunal presumed to be more impartial than a court of the State in which one of the litigants resides").

have followed the sanctioning *procedures* in the Local Rules for the alleged *violation* of the Local Rules. In short, even assuming that these provisions "preserve" the district court's inherent power to sanction, the question presented by the instant petition is whether that inherent power may be exercised absent a determination that the statutes and local rules are not "up to the task."

Respondent also contends that the Ninth Circuit remarked that "Mr. Sutter's conduct at trial alone was sufficient to support revocation of *pro hac vice* admission." Opp. 2. But the district court never made this determination. Moreover, even if the district court *had* made this determination, and invoked its inherent power to revoke Mr. Sutter's *pro hac vice* admission based on his alleged violation of the orders *in limine*, such a ruling would have implicated the same questions raised in the instant petition because, as the court itself acknowledged, the Local Rules also "allow[ ] the court to sanction an attorney for violating a court order," and thus reliance on the inherent power would not have been necessary. Pet. App. 37a.

II. REVIEW IS WARRANTED TO RESOLVE THE CONFLICT REGARDING NONCOERCIVE, NONCOMPENSATORY CONTEMPT CITATIONS.

Respondent strives to downplay the conflict between the decision below and the D.C. Circuit's decision in *Cobell v. Norton*, 334 F.3d 1128 (D.C. Cir. 2003), contending that *Cobell* is distinguishable. Respondent offers two bases for distinction. Neither has merit.

First, respondent asserts that this is a case where the contempt citation was "combined with compensation for the opposing party," thus rendering the sanction civil rather than criminal in nature. Opp. 13. But respondent's argument is contradicted by the district court's opinion, which makes abundantly clear that the contempt citation was a stand-alone punishment that was *not* "combined with" the monetary sanctions. Section III(A) of the district court's opinion is entitled

"Sanctions" and imposes monetary sanctions against Mr. Sutter and Ford (Pet. App. 38a-44a). Section III(B) is entitled "Contempt" and imposes a contempt citation against Mr. Sutter. The "Sanctions" section does not make any mention of contempt, and the "Contempt" section does not make any mention of monetary sanctions. Moreover, the "Conclusion" section begins with a paragraph ordering Ford and Mr. Sutter to pay monetary sanctions, then states in a separate paragraph that "IT IS FURTHER ORDERED that Lawrence A. Sutter is in contempt of court for violating the Court's order in limine regarding alcohol." Pet. App. 52a. Exactly as in *Cobell*, the contempt citation did not furnish the predicate for the monetary sanctions, and the "exceedingly strong words [the district court] used in finding [Mr. Sutter] in contempt . . . suggest the court intended the adjudication and accompanying opinion to serve as a reprimand." *Cobell*, 334 F.3d at 1146.

Second, respondent asserts that "the conduct sanctioned in *Cobell* did not occur in the presence of the court." Opp. 13. But respondent nowhere explains why this fact would have any legal significance. The contempt sanction in this case was *not* imposed as a summary contempt pursuant to Federal Rule of Criminal Procedure 42(b)—which allows a court to punish petty contempts that occur in the court's presence—nor could it be sustained as one. *See In re Gustafson*, 650 F.2d 1017, 1022 (9th Cir. 1981) (summary contempt proceedings may only be used in "exceptional circumstances" and "where instant action is necessary to protect the judicial institution itself").

Respondent admits that "[i]t is true that aspects of the *Lasar* contempt have characteristics of a criminal contempt" in that "[i]t was based upon completed conduct, and Sutter cannot fairly be said to have had an opportunity to escape the contempt and sanctions by compliance." Opp. 14. These undisputed facts establish that, under this Court's decision in *Bagwell*, the contempt was criminal and Mr. Sutter should have been afforded the procedural and substantive protections that attach in a criminal proceeding. *See Bagwell*, 512

U.S. at 827 (whereas criminal contempt is based on a completed act and intended to vindicate the authority of the court, civil contempt is "considered to be coercive and avoidable through obedience"). The D.C. Circuit was therefore correct in holding these types of punitive contempts—predicated on completed conduct and unavoidable through obedience—to be criminal in nature. This Court should grant review, reject the Ninth Circuit's approach, and hold that courts cannot impose punitive and stigmatizing sanctions under the guise of mere "civil" contempts.

CONCLUSION

The strong language in the district court's order was intended to serve as a public reprimand of Mr. Sutter. The order and the contempt citation continue to damage his career, as his opponents routinely introduce the order in opposing his efforts to gain admission *pro hac vice* in jurisdictions throughout the nation. The district court's disregard of its own Local Rules in favor of its inherent power directly implicates a circuit split, and demonstrates the dangers of an unchecked inherent power to sanction.

For all the reasons set forth above and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

THEODORE J. BOUTROUS, JR.
Counsel of Record
THOMAS H. DUPREE, JR.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue NW
Washington, DC 20036-5306
(202) 955-8500

Counsel for Petitioner

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